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IN THE

MICHAEL RODAK, JR., CLERK

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-794

ROBERT A. deVITO, M.D., Director, Illinois Department
of Mental Health and Developmental Disabilities,

Petitioner,

vs.

JULIUS LANG, Conservator of Donald Lang,
Respondent.

**On Petition For Writ Of Certiorari To
The Supreme Court Of Illinois**

MEMORANDUM OPPOSING CERTIORARI

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Within the span of little more than one month, this case is again before this court. Donald Lang is an illiterate deaf mute who was charged with a 1971 murder. Following a verdict of guilty, the Illinois Appellate Court revised and remanded the case because Lang could not communicate with counsel. Lang was then found unfit to stand trial and a civil commitment hearing was held. Having decided that Lang was not in need of mental treatment, but still dangerous, the trial court conducted a bond hearing where the Department of Mental Health and Developmental Disabilities (DMHDD) was ordered to train Donald Lang. A writ of mandamus was issued by the trial court directing Dr.

deVito to create and implement a treatment program. On appeal, the court vacated the writ of mandamus. The Illinois Supreme Court affirmed the Appellate Court's vacating the writ of mandamus and found that DMHDD did not have to provide a program for Lang. The Illinois Supreme Court remanded the case for further hearings based on its opinion construing the 1979 Mental Health and Developmental Disabilities Code, *People v. Lang*, 76 Ill.2d 311 (1979).

On November 13, 1979, this court denied a writ of Certiorari to defendant Donald Lang, *Lang v. Illinois*, 48 L.W. 3323 (79-5425). One of the issues sought to be reviewed there is precisely that which is now being raised by Petitioner deVito. While Donald Lang may have had standing to raise the issue of whether the interpretation placed upon the mental health commitment procedures by the court below meets due process and equal protection requirements, the Director of DMHDD has no standing to do so.

It cannot be supposed that any injury to DMHDD or its Director could possibly have resulted from the challenged ruling of the Illinois Supreme Court. This ruling simply construed the statute under which persons may or may not be committed to the custody of DMHDD.

The "Substantial Relation" that Director deVito claims with those persons who may fall within the ruling is a fiction. If the Director were to succeed in the argument presented in his petition for a writ of certiorari he would bear no relationship whatsoever to the persons on whose behalf he claims to proceed.

The exceptional cases in which this court has allowed a litigant to invoke the right of a third party involved an intimate relationship between the litigant and the third

party; severe obstacles to the third party's assertion of his own rights; or both these factors. Neither factor is present in this case. It is unfair to allow the Director to litigate the rights of merely potential patients; those persons should be allowed to decide for themselves, as did Donald Lang, when and if assertion of alleged constitutional claims is appropriate. Administrative needs should not serve as the guidepost by which constitutional rights or standing are asserted.

CONCLUSION

Petitioner has failed to allege even the minimal injury required for a constitutional case or controversy. Accordingly, the petition for a writ of certiorari fails to present a justifiable issue that may be decided by this court. For these reasons, the People of the State of Illinois respectfully request this court to deny the Petition for Certiorari.

Respectfully submitted,

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